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DOES EUROPEAN INTEGRATION SUPPORT THE MINORITY QUEST FOR AUTONOMY? – MINORITY CLAIMS FOR SELF-GOVERNMENT AND DEVOLUTION PROCESSES IN EUROPE¹

In recent years there has been an increasing interest in research on the effects of European integration in the national minority policy field.² Minority issues emerged both in relation to the internal and external dimensions of European Union integration. After the adoption of the Lisbon Treaty new references appeared to minority rights in primary EU law, while in the EU's external relations minority issues raised interest within EU enlargement policy. In a broader context, one part of the discussion focuses on the transformation of state sovereignty, the question of shared sovereignty,³ multi-level governance,⁴ and in this context what these new developments offer to ethno-regional communities or "national minority regions"⁵. Both within and outside the EU there is much discussion about decentralization and minority claims for autonomy. (Hungarian minorities and their political parties in Romania, Slovakia, and Serbia are particularly concerned.) Here I make an attempt to highlight the different framings of ethno-regional self-governance or territorial minority autonomy: on the one hand there is a tangible change in EU law and policies on minority rights; on the other hand we see strong devolution processes within some EU member states (UK - Scotland, Spain – Basque Country, Catalonia, or

¹This paper was prepared with the support of the OTKA project n. K105432. Special thanks are due to Prof. Olivier Corten and to the team of the Centre Droit International, Université Libre de Bruxelles for their hospitality during my research stay in Brussels between July 2013 and December 2013 and to the Hungarian Scholarship Board which supported my stay in Belgium by a „Hungarian State Eötvös Scholarship”.

²See among others Tawhida Ahmed: *Impact of European Union Law on Minority Rights*. London: Hart, 2011. Bruno De Witte – Enikő Horváth: The many faces of minority policy in the European Union. In Kristin Henrard – Robert Dunbar (eds.): *Synergies in Minority Protection. European and International Law Perspectives* Cambridge: Cambridge University Press, 2008. 365-384.; Kirsten Shoraka: *Human Rights and Minority Rights in the European Union* London: Routledge, 2010; Tamara Jovanovic: *National minority groups in post-Lisbon Europe: the presence of Europeanisation and transnational human rights in one policy field*. ECMI Working Paper #56, Flensburg: ECMI, 2012.

³Micheal Keating: European Integration and the Nationalities Question. *Politics and Society*, 2004(32) 367-389.

⁴Micheal Keating: *The New Regionalism in Western Europe. Territorial Restructuring and Political Change*. Aldershot: Edward Elgar, 1998.

⁵The term „national minority region” is used by Tove Malloy, which can be simply identified as „regions where national minorities are in the majority”. Tove Malloy: *National Minority 'Regions' in the Enlarged European Union: Mobilizing for Third Level Politics?* ECMI Working Papers #24 Flensburg: ECMI, 2005.

see the constantly developing constitutional forms in Belgian federalism and other forms of decentralization.).

Apparently these are two separate developments. The modest references to minority rights in the Lisbon Treaty are linked to the ‘penetration’ of the existing international human and minority rights regime in EU law and policies. On the other hand, the reinforcement of the regional level in the EU and the strengthening of autonomist or even separatist movements in some Member States are usually connected with the broader political processes of state transformation – often induced by the deeper political integration in the EU.⁶ Nevertheless, the two aspects are equally important for territorially concentrated national minority communities which live in unitary nation states within the EU (or in an EU candidate state) and have aspirations for some form of territorial self-government. To give an example, the main Hungarian minority parties in Romania and Serbia (Democratic Alliance of Hungarians in Romania - RMDSZ and Alliance of Vojvodina Hungarians – VMSZ respectively) both put cultural and territorial autonomy high on their political agenda and both parties are devoted advocates of European integration.⁷

The question addressed here is whether the different aspects of Europeanisation may in any way have effects on minority claims for autonomy.

The international background for the minority rights discourse in the EU

From a political perspective, the fact that “minority rights discourse” gained terrain within the European Union is largely attributed to the enlargement process. The “respect for and protection of minorities” has become an integral part of the political conditionality of accession, as it was adopted in 1993 in the Copenhagen criteria. The European Commission’s regular reports and the European Parliament’s resolutions on candidate states’ progress made towards membership contain regular references to international minority rights standards. These references remained rather vague, and they cannot be seen as any form of legal monitoring of the implementation of international minority rights standards. Nevertheless, there are some elements which may inform us about the development of an “EU-approach” to minority rights.⁸ During the Eastern enlargement process EU institutions have developed a more and more competent approach in interpreting minority rights. Both the Commission and the European Parliament are keen to build their observations on more objective criteria, which is reflected in the recurring references to the existing pillars of international minority rights law: the Framework Convention for the Protection of National Minorities (FCNM) and the OSCE documents, especially the

⁶ See for example: Micheal Keating: Rethinking Sovereignty, Independence-lite, Devolution-max and National Accommodation. In: *REAF*, núm. 16, octubre 2012. 9-29.

⁷ Cf.: Edina Szöcsik: The EU Accession Criteria in the Field of Minority Protection and the Demands of Ethnic Minority Parties. *Journal of Ethnopolitics and Minority Issues in Europe* (JEMIE), 2012 3(2). 105-127.

⁸ See e.g. Gwendolyn Sasse: The politics of conditionality: the norm of minority protection during and beyond EU accession. In *Journal of European Public Policy* 2008 (15). 842-860.

statements, recommendations of the OSCE High Commissioner on National Minorities (HCNM). The ratification of the Framework Convention has become a tacitly accepted precondition of accession.⁹ In this sense the recognition of the catalogue of minority rights established in the FCNM and in OSCE documents can be seen as the main reference point for assessing the situation of minorities also in the enlargement process. It is true that within the European Union, the significance of the FCNM is not really tangible, inasmuch EU institutions do not monitor Member States' compliance with the FCNM, and even today the EU lacks explicit competence in promoting minority rights protection within the Union. Consistent arguments can be made for a speculation that as part of the European human rights regime the FCNM may become an external reference for EU institutions in interpreting the term "minority" or "minority rights" within the context of EU law and policies.¹⁰ In this broader perspective I take a look at the recent developments on how the minorities' quest for autonomy can be framed in the existing Council of Europe (CoE) and Organization for Security and Cooperation in Europe (OSCE) standards on minority rights.

Legal approach to minority self-government

As a starting point, two main approaches can be distinguished on which minority claims for autonomy can be built upon. From a minority rights protection perspective, the right to participation may be the key element. The broadest understanding of participation may include not only representation, but some kind of self-government or autonomy as well. A different perspective is offered by the limited interpretation of peoples' right to self-determination – here obviously meaning internal self-determination or self-government.

The FCNM does not make any reference to minorities' right to autonomy and there are only a few international political documents which do so in any way.¹¹ But this obviously does not imply that minority claims for autonomy could be denied on the basis of existing international standards. How can we frame minority claims for autonomy under international law?

What is autonomy?

Ghai differentiates between autonomy and federalism as two major forms of self-governance, acknowledging that both involve a division of powers on a territorial basis. "The difference is that in autonomy only one or two regions have a special status,

⁹The Commission explicitly urged among others Estonia for the ratification of the FCNM and as a matter of fact each candidate state signed and ratified it before accession.

¹⁰A balanced view is expressed on this issue by Cristophe Hillion: *The Framework Convention for the Protection of National Minorities and the European Union*. Report to the 2nd workshop on the Conference Enhancing the Impact of the Framework Convention, 9-10 October 2008, Strasbourg.

¹¹Among others see Art. 11 of 1201(1993) Council of Europe Parliamentary Assembly Recommendation.

while in federalism all parts of the country, divided into regions, take part in the system of divided powers and institutions.”¹²

“Collective rights may encompass a wide range of issues important for minority life. If collective rights amount to some form of essential self-determination (political, cultural or other) they become an autonomy.”¹³ In line with this definition, the most important criteria of any form of minority autonomy is that it shall be vested with specific jurisdiction over a substantial number of minority issues and shall exercise this jurisdiction under its own responsibility. The various legal arrangements guaranteeing autonomy in national legislations can be divided along their finality, whether they provide autonomy for a group of people on a personal basis or for a territory and the people living on that territory.

The right to participation in public life is a well-established and widely recognised right of minorities (see FCNM Art. 15, OSCE Copenhagen Document para. 35, OSCE HCNM Lund Recommendations, etc.). Political rights are essential for the protection and promotion of group interests. This implies that people belonging to minorities shall not only have the right to full equality before the law in their political rights without any form of discrimination, but it also sheds light on their special needs in influencing public affairs. Ghai underlines that the functions of participation “may range from lobbying at one end to making decisions at the other.”¹⁴ People belonging to national or ethnic, religious and linguistic minorities usually have their own ideas about the state, about their role in that state, and on their relations with the majority. These ideas in most modern nation-states are hardly reflected in the political credo of the majority. Thus, minorities shall not only have the right to “have a say” – the basis of political participation – in political affairs, but they may require to have a “control” over issues affecting them directly. “Having a voice” in public affairs may be interpreted on a broad scale from presence, consultative rights, to other forms of weak or strong influence on public affairs. International documents stress the importance of “effective participation” in public life: i.e. that minorities should have more participatory rights than just having the right to express their political opinions openly (either through freedom of speech or via voting rights). It is not difficult to arrive from this stand to the recognition of minorities’ right to some kind of self-government or the right to control issues directly affecting the preservation of their identity.

As modern nation-states are organised on a territorial and ethno-cultural basis, the question of minorities’ participation in public life raise important questions on the role of the state and its relation to the political community. Minority participation may be interpreted in a limited form as “representation” and in a more extensive form

¹² Yash Ghai: Participation as Self-Governance. In: Marc Weller (ed.): *Political Participation of Minorities*. Oxford: Oxford University Press, 2010. 621.

¹³ Georg Brunner – Herbert Küpper: European Options of Autonomy. In: Kinga Gál (ed.): *Minority Governance in Europe*. Budapest: LIG-ECMI, 2002. 19.

¹⁴ Yash Ghai: Participation as Self-Governance in: Marc Weller (ed.): *Political Participation of Minorities*. Oxford: Oxford University Press, 2010. 615.

as “self-governance”.¹⁵ Majority communities usually tend to prefer “representation” as it does not affect their control over the entire territory of the state and their own members outside the majority areas would thus not suffer discrimination. For minority communities, participation without self-government would be a limitation on their political rights, especially of their equality in controlling affairs that deeply matter for minority communities, such as culture, language, etc. “Each approach is fraught with anxiety for one or the other group, with the fear that its fundamental rights would be under threat.”¹⁶ Nonetheless, there are a few – legally non-binding – international documents, which may seem to accept the right of minorities to autonomy also at an international level.¹⁷

A positive evaluation of autonomies is reflected in the CoE Parliamentary Resolution 1334 (2003) in which the Parliamentary Assembly acknowledged that, giving autonomous governing structures to minorities may contribute not only to domestic, but also international stability and conflict prevention, which is still one of the political aims of providing effective minority protection.¹⁸ As the Rapporteur of the Resolution, Andreas Gross concluded: “*Autonomy allows a group which is a minority within a state to exercise its rights, while providing certain guarantees of the state’s unity, sovereignty and territorial integrity.*”¹⁹

On the other hand, even if it is not guaranteed, the establishment of regional governments often leads to more efficiency and accountability.²⁰

As the European Commission relies largely on the FCNM and OSCE documents in identifying minority rights standards, it is worthwhile to see what forms of participation are recognised in this context.

The OSCE High Commissioner on National Minorities (HCNM) Lund Recommendations²¹ list various forms of participation, such as:

¹⁵ Cf.: Ghai *op. cit.* 616-617.

¹⁶ Ibid.

¹⁷ The most important acknowledgement of the importance of autonomy in minority protection is reflected in CoE PA Rec. 1609 (2003) on the *positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe*. Moreover in earlier precedents CoE PA Rec. 1201 (1993) on an *additional protocol on the rights of national minorities to the European Convention on Human Rights*, stated under Art. 11. “*In the regions where they are in a majority the persons belonging to a national minority shall have the right to have at their disposal appropriate local or autonomous authorities or to have a special status, matching the specific historical and territorial situation and in accordance with the domestic legislation of the state.*” See also e.g. 1990 OSCE Document of the Copenhagen meeting of the Conference on the Human Dimension of the CSCE Ch. IV, para. 35: “*The participating States note the efforts undertaken to protect and create conditions for the promotion of the ethnic, cultural, linguistic and religious identity of certain national minorities by establishing, as one of the possible means to achieve these aims, appropriate local or autonomous administrations corresponding to the specific historical and territorial circumstances of such minorities and in accordance with the policies of the State concerned.*”; and OSCE Charter for European Security, Istanbul, November 1999 Ch. III, para. 19.: “*Various concepts of autonomy [...], which are in line with OSCE principles, constitute ways to preserve and promote the ethnic, cultural, linguistic and religious identity of national minorities within an existing State.*”

¹⁸ CoE PA Res. 1334 (2003) *On the positive experiences of autonomous regions as a source of inspiration for conflict resolution in Europe*.

¹⁹ CoE Parliamentary Assembly, Report on behalf of the Political Affairs Committee, Doc. 9824, 3 June 2003. 2.

²⁰ Ghai, *op.cit.* 629.

²¹ The Lund Recommendations on the Effective Participation of National Minorities in Public Life. The Hague,

special representation in organs of the state (executive, legislative, public service, etc.)

- electoral systems which ensure adequate representation
- mechanisms to ensure that interests of minorities are considered in state agencies
- recognition of minority languages in public service
- institutions to advise on minority issues
- institutions for consultation

control or dominance of decision-making processes. [emphasis added]

The FCNM Advisory Committee in a similar way highlights the great variety of forms of effective participation, “such as exchange of information, dialogue, informal and formal consultation and participation in decision-making”.²² Considering their participation in decision-making, the FCNM AC analyzes various forms:

- participation in the legislative process
- participation through specialised governmental bodies,
- participation through consultative mechanisms
- representation and participation in public administration, in the judiciary and in the executive

- participation through sub-national forms of government

participation through autonomy arrangements. [emphasis added]

These documents recognise autonomy as an acceptable, legitimate and positive form of participation for minorities, but still these recommendations reflect much more existing state practices than establishing general standards for states. In the establishment of such self-governance, all forms of autonomy (territorial or personal) are dependent on domestic political developments, but in each case the community itself gains special institutions for the effective protection of the rights of the community and the individuals belonging to that minority group. Laws on self-government are almost always negotiated, and the outcome of negotiations is partly dependent on the rights and obligations of the negotiating parties. Dinstein has identified seven ways in which self-government has been established: multilateral (Bosnia-Herzegovina) or bilateral (Palestine) treaties; resolution decisions by the Security Council (Kosovo); and national laws, sometimes based on international treaty (South-Tyrol/Alto-Adige) or sometimes purely local initiative (Greenland).²³

Locked in the debate on self-determination

From another approach there is a close link between political participation and self-determination. In fact, in minority demands for autonomy, states often see hidden claims for future secession. Thus the question of minority autonomy is often linked to security concerns and to the interest in maintaining political stability. While personal autonomy could hardly be seen as providing any basis for territorial claims, the main

OSCE High Commissioner on National Minorities, September 1999.

²² *Commentary No. 2. on The Effective Participation of Persons belonging to National Minorities in Cultural, Social and Economic Life and Public Affairs.* Adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities on 27 February 2008. ACFC/31DOC(2008)001

²³ Y. Dinstein: *Autonomy (International Guarantees of Autonomy)*. In Zelim Skurbaty (ed.): *Beyond a One-dimensional State: an emerging right to autonomy?* Leiden: Martinus Nijhoff, 2005.

problem is seen in the close interrelation perceived between the right to autonomy and peoples' right to self-determination. The right to self-determination, as it is formulated under the UN Charter²⁴ or the 1966 UN Covenants on human rights²⁵ first and foremost describes the process whereby a people freely determines its own political status, which should not necessarily imply the creation of an independent state. Nevertheless, by offering specific competences to the minority community, minority autonomy - especially territorial autonomy - nourishes in many states political concerns on questioning the ruling concept of the unitary nation-state.²⁶

For a long time this restrictive approach dominated the interpretation of self-determination in international law. Cristescu, UN Special Rapporteur underlined in his report that peoples shall not be confused with ethnic, religious and linguistic minorities.²⁷ And in a similar way McGoldrick argues that Art.1 and Art. 27 of ICCPR neatly differentiate between their target groups, and Art. 1 was clearly not intended for minorities. However, contrary to his opinion, Cassese analysed the *travaux préparatoires* of Art. 1 ICCPR that allow the conclusion that 'peoples' also include nations and ethnic groups.²⁸ In recent years there seems to be an increasing support for a more favourable, albeit qualified approach concerning minorities and the right to (internal) self-determination.²⁹ There is a clear tendency to recognise a certain right to internal self-determination for minorities. As Cassese puts it "important examples of the right to self-determination in its internal dimension are participatory rights for members of minorities and a certain notion of democracy."³⁰ This new approach to self-determination was overtly recognised in the UN Declaration on the Rights of Indigenous Peoples (Arts. 3-4) reaffirming that "indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs..." (Art. 4.).³¹ What is important here from this aspect is that the principle of peoples' right to self-determination is gaining a more sophisticated interpretation at the international level offering some legal grounds for minorities claiming the right to autonomy.

²⁴ Art. 1(2) of the Charter of the United Nations.

²⁵ Art. 1 (1) of the ICCPR and the International Covenant on Economic, Social and Cultural Rights is identical and reads as follows: „All peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

²⁶ Brunner – Küpper: *op.cit.*

²⁷ *The Right to Self-Determination. Historical and Current Developments on the Basis of UN Instruments*. Study prepared by Aureliu Cristescu. UN Doc E/CN.4/Sub.2/404/Rev.1.

²⁸ Antonio Cassese: *Self-Determination of Peoples – a Legal Reappraisal*. Cambridge: Cambridge University Press, 1995. 95.

²⁹ See for a good assessment of these arguments: Kristin Henrard: *Devising and Adequate System of Minority Protection*. The Hague/Boston/London: Martinus Nijhoff, 2000.

³⁰ Antonio Cassese: *op. cit.* 98.

³¹ Adopted by the UN General Assembly on 13 September 2007, at its 107th plenary meeting. (A/61/L.67 and Add.1)

Minorities, autonomy and regionalism in EU context

There are different EU policy fields which may be relevant for the protection, preservation or promotion of minorities and their identities. One policy dimension stems from the principle of respect for diversity – embodied in EU treaties since the 1990s. Another field is the evolving human rights law within the EU. It is not easy to identify direct links between EU law and international minority rights standards; the most obvious is the EU's non-discrimination legislation and human rights regime. There is a long history behind the evolution of human rights protection commitments under EU law which culminated in the EU's accession to the European Convention on Human Rights (ECHR).³² Since the adoption of the Lisbon Treaty (LTEU)³³, primary EU law have been containing a solid framework for the safeguard of human rights regarding the implementation of EU law. It also recognized the basis for the respect of minorities as a value, which shall be respected and applied under community action. Art. 2 LTEU states that "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, *including the rights of persons belonging to minorities*. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail." [emphasis added] Moreover, the EU *acquis* on non-discrimination has also become more inclusive to encompass the prohibition of discrimination not only on the grounds of ethnic origin,³⁴ but also on the basis of belonging to a national minority. Art. 21 of the Charter of Fundamental Rights of the European Union (which was incorporated in the Lisbon Treaty) added 'national minority' as a new ground on which discrimination is prohibited. This provision is largely inspired by Art. 14 of the ECHR, which stipulates the same grounds for prohibiting discrimination. The Charter does not establish new fields for community action, but it still binds EU institutions through EU treaties (see Art. 6 LTEU).

The emergence of the term "minority" for the first time in EU treaties, is closely linked to the existing European regime of human rights, developed primarily within the Council of Europe. Nevertheless this vague reference to minorities is far from offering any direct connection with the discussion on minorities' right to autonomy in international law. Other policy fields thus may have more relevance for minority claims for autonomy – though without relying on the legal background of minority rights in international law. The main field of influence is connected to the practical consequences of European regional policy and the economic incentives associated with it, which may open new opportunities for regionally concentrated national minority groups.³⁵ Other policy areas may also have an impact on the situation of minorities.

³² Paul Gragl: *The accession of the European Union to the European Convention on Human Rights*. London-Oxford: Hart, 2013.

³³ *Official Journal of the European Union*, C 326 26 October 2012

³⁴ Art. 10 and Art. 19 LTEU, or 43/2000 Race Equality Directive

³⁵ Micheal Keating – John McGarry: *European Integration and the Nationalities Question*. London: Routledge, 2006.
For a broader perspective see also Tove H. Malloy: *National Minority 'Regions' in the Enlarged European Union*:

The Europeanisation of Regions – the missing link

In recent years there has been more and more discussion on the role of European integration in the wider process of state transformation.³⁶ One important conclusion in this respect is that in the period between 1980 and 2001 none of the EU member states has become more centralized, but many of them have taken steps for regional decentralization of power.³⁷ This observation is still valid. Departing from the model of multi-level governance (MLG) – new findings emerged on the interrelation between a deepening integration under the European Union and the rise of regional, nationalist regional movements and claims.³⁸ Keating also points out that national minority movements rarely demand independence from the start, they are much more inclined toward obtaining a form of some kind of extended self-government.³⁹

According to Keating there are close links between “nationality claims and European integration and the ways in which Europe can help by providing a ‘third way’ between national separatism and regional devolution”.⁴⁰ He identifies three levels in this: normative and functional transformation of the state; transformation of nationality movements (towards doctrines of shared sovereignty) and the evolution of a more open political atmosphere in Europe in which such claims can be put forward; and the new opportunity structures Europe opens for minority, nationality movements.

Malloy in her thorough analysis of the position of national minority regions sees various new opportunities in the EU, either they form an administrative entity within their state or not. The EU offers a complex opportunity structure: the Cohesion Policy is aimed at providing financial assistance for socially, economically disadvantaged European regions in order to reduce disparities between the levels of development of the various regions and opening a path for stronger cohesion within the EU. Even if the principle of subsidiarity (Art. 5 (3) LTEU) suggests that regional and local authorities should be involved in decision-making, in practice it largely depends on the Member States’ governments how much influence they give to actors at sub-national levels in the use of EU regional funds. The regional financial support may help first of all those regions which enjoy a strong and autonomous position in the constitutional structure.⁴¹ The EU started to provide financial support for CEE states already during the pre-enlargement period. The Phare program was modified in 1997-1999 to help candidate states to meet accession criteria. The EU has financed a wide range of different projects, including cross-border co-operation. ISPA (Pre-Accession Structural Instrument) has been financing transport and environmental projects in the region. SAPARD (Special

Mobilizing for Third Level Politics? ECMI Working Paper #24, Flensburg: ECMI, 2005.

³⁶ Martin Crevel: *The Rise and Decline of the State*. Cambridge: Cambridge University Press, 1999.

³⁷ L. Hooghe – G. Marks: Types of Multi-Level Governance. *European Integration Online Papers* Vol. 5 (2001) n. 11. www.eiop.or.at

³⁸ Micheal Keating: ‘European Integration...’ *op. cit.*

³⁹ Micheal Keating: ‘Rethinking Sovereignty...’ *op. cit.*

⁴⁰ Micheal Keating: ‘European Integration...’ *op. cit.* 368.

⁴¹ Malloy: *op. cit.* 20-21.

Accession Programme for Agriculture and Rural Development) was helping the applicant states to develop their capacities for the CAP (common agricultural policy). While EU policies and aid programs provide new financial resources for sub-state regions and regional development, the decision on the political position of regions remains at the exclusive competence of member states. Thus most of the regional economic resources coming from common EU programs can be benefited by the politically autonomous regions in the first place.

In political sphere the creation of the Committee of the Regions (CoR) in the Maastricht Treaty offered a new form of representation for local municipalities and regions alike. The position of the Committee of the Regions has changed substantially during the past years. While at its establishment it was exclusively a formal institution for regional/local representation, since the adoption of the Treaty of Lisbon, the CoR has gained stronger consultative competencies in various policy areas. Already during the elaboration of the Constitution for Europe in 2003-2004, the question of subsidiarity and reinforcement of regional dimension within the EU was strongly promoted by the CoR. Besides that, the most powerful autonomous regions formed a Conference of the Presidents of Regions with Legislative Powers (RegLeg) and they exerted pressure on their state representatives to promote greater role for regions in the new Treaty. As it was observed in this discussion the strong European regions could have influence on the extension of the principle of subsidiarity in the European Convention.⁴² The Treaty of Lisbon also was largely based on the experiences of the failed European Constitution and indeed offered a stronger position for the CoR. Even though, as Malloy underlines “where sub-state units have autonomy and perhaps self-government rights, their political power is considerably stronger at member state level than at the EU level.”⁴³ The same goes for other political representation opportunities, such as opening regional representation offices in Brussels, para-diplomacy, etc.

Another relevant dimension of European politics are the minority party coalitions and federations. Ethno-regionalist parties gained stronger support during the past decades in various EU member states.⁴⁴ Even at the European Parliament elections they could better mobilise their electorate. The European Free Alliance (EFA) was established in 1981 to help the co-operation between such regional, minority parties in the European Parliament. Nevertheless here again, the member parties of the EFA are mostly regional Western European parties, thus none of the Hungarian parties from Slovakia, or Romania have joined it.

Analysing the position of Hungarian minority parties in Romania and Serbia in comparison with the EU accession conditionality, Szöcsik finds that while the goal of establishing some kind of territorial autonomy is strongly represented by these parties, it has never been echoed in EU conditionality policy. Even if the European Commission encouraged decentralization in both countries, it has never linked it to minority

⁴² Malloy: *op. cit.* 18-19.

⁴³ Ibid.

⁴⁴ See Lieven de Winter – Huri Türsan (eds.): *Regionalist Parties in Western Europe*. (Routledge, London, 1998)

protection.⁴⁵ Furthermore within the European Union it seems to be even more difficult for minority representatives to exert pressure on their governments in this field, as there is no EU guidance on the empowerment of regional levels.

Conclusion

Since the adoption of the Lisbon Treaty the references to minority rights within the EU can be linked more easily to international standards. The European Union is very far from embracing a consistent, standardised legal approach to minority rights protection. Although there would be a legal foundation under international law for minorities to articulate claims for autonomy, these arguments can hardly be linked to EU policies or EU law. Any form of minority autonomy remains dependent on domestic political developments. Even if there are policy fields of European integration that may help national minorities at regional levels, this is valid for only those national minority regions which enjoy a stable constitutional autonomy. The new political opportunity structures offered by the development of European integration are only partly available for minority communities in Central and Eastern European EU member states.

⁴⁵ Szöcsik: *op. cit.* 121-122.

Markku Suksi

TERRITORIAL AUTONOMY: THE ÅLAND ISLANDS IN COMPARISON WITH OTHER SUB-STATE ENTITIES¹

Introduction

The legal position of the Åland Islands continues to attract international interest, probably for the reason that it is an example of an arrangement through which a territorial conflict between two states, Finland and Sweden, was solved in a peaceful way.² The Ålandic self-government involves law-making powers and is probably for that reason internationally well known under the term autonomy. In fact, the Ålandic variant of autonomy is often referred to as the oldest existing autonomy arrangement in the world. What is less known is the more precise constitutional structure of the arrangement in the domestic law of Finland and how the bilingual state of Finland with 5.3 million inhabitants accommodates, through the autonomy arrangement, a monolingual Swedish-speaking region with only 28000 inhabitants within a Swedish-speaking minority of altogether 294000 inhabitants that does not, as a whole enjoy territorial autonomy.

During the past twenty years, a great number of delegations from foreign countries have visited Finland and the Åland Islands in order to familiarize themselves with the autonomy model of Åland. In spite of this international interest, it would be difficult to establish that a particular autonomy arrangement among the more than 60 examples³ would be copies of the Åland case. For instance, in the relatively recent past, there is the peace process of Aceh, which under the auspices of the former Finnish president Martti Ahtisaari resulted in an agreement on peace between the Government of Indonesia and the Free Aceh Movement, or the rebel group GAM. An important part of the peace

¹ In this contribution, section 2 is excerpted, with kind permission of Springer Science+Business Media, from 503-513 in Suksi, Markku: Legal Foundations, Structures and Institutions of Autonomy in Comparative Law. In Oliveira, J.C. and Cardinal, P. (eds): *One Country, Two Systems, Three Legal Orders – Perspectives of Evolution*. Berlin, Heidelberg, Springer, 2009., while sections 3, 4 and 5 are excerpted, with kind permission of Koninklijke Brill NV, from 56-65 in Suksi, Markku: Explaining the Robustness and Longevity of the Åland Example in Comparison with Other Autonomy Solutions, *International Journal on Minority and Group Rights* 20(2013) Brill, Leiden, 2013.

² For a comparison of six existing and one historical autonomy with each other, see Suksi, Markku: *Sub-State Governance through Territorial Autonomy – A Comparative Study in Constitutional Law of Powers, Procedures and Institutions*. Springer-Verlag, Berlin, Heidelberg, 2011.

³ See Ackrén, Maria: *Conditions for different autonomy regimes in the world: a fuzzy-set application*. Åbo Akademi University Press, Åbo, 2009., who included altogether 65 territorial autonomies in her review of different empirical dimensions of autonomy.